I

Introduction

Land Titling as State Building

In recent years, the question of who controls land in African countries has grown increasingly contentious. Violent protests, accusations of land grabbing, and heated debates over land rights occur across the continent. Soaring demand for land, from both global and domestic markets, fuels these conflicts. Foreign investors purchase vast tracts of land for commercial agriculture; growing cities encroach on peri-urban areas; and members of the urban middle class seek rural plots of land as investments for the future. Simultaneously, millions of subsistence farmers and pastoralists depend on secure access to fertile land, which is threatened by land degradation, climate change, and population growth. This high demand has provoked the expansion of state property rights – land titles – on vast areas of land previously governed by customary authorities and local communities.

Land titling is deeply political. In Zambia and Senegal, the focal countries in this book, titling permanently transfers land from customary to state control. Each new title shifts the distribution of power over land rights toward the state. Land titling is therefore a process of expanding state power over land, not merely part of an inevitable evolution toward formality or a product of economic development. Titling codifies and maps land rights that were previously outside direct state control. In doing so, it makes land and its users legible to the state.¹ This extends the state’s territorial reach within boundaries inherited from colonial rule and increases its interactions with citizens. Further, land

¹ Scott 1998.
titling makes it easier for the state to distribute and tax land, building the state’s revenue base and capacity to extract. Given these linkages between land and political authority, states have long employed land rights as an essential technology of state building. Strong states use top-down campaigns, such as forced collectivization schemes or compulsory mass land titling, to weaken alternative systems of property rights and land authority. However, land registration is now the most common form of land reform in African countries. From Benin to Mozambique to Madagascar, governments have established frameworks for “piecemeal” land titling, in which individual agents—citizens, bureaucrats, and investors—register customary land as new state titles. This allows state control over property rights to grow, plot by plot, during an era of high demand for African land.

There is reason to expect that land markets and the state’s interests will dictate where land titling occurs. Investors and regular citizens alike should seek titles on more valuable and desirable land, where the economic benefits of formal property rights are the highest. State property rights should therefore develop first in areas with higher population density, fertile land, and infrastructure access. Further, states are powerful; they have the resources to encourage or compel titling on any land within their territorial boundaries. In Zambia, all land is vested in the president. In Senegal, land without titles is “owned” by the nation. These states have thus laid the legal groundwork for politicians who are motivated to facilitate lucrative land markets or to fulfill strategic political agendas to determine where titling occurs. In addition, it is costlier for the state to project authority over geographic distances; therefore, state control of land should expand first in areas closest to seats of bureaucratic

2 For example, Zambia’s minister of finance introduced the country’s 2014 budget to parliament with a speech extolling the importance of land titling to increase government revenue and “bring sanity in land administration.” See: The 2014 Budget address by Hon. Alexander B. Chikwanda, Minister of Finance, Delivered to the National Assembly on October 11th, 2013.


4 Sikor and Müller 2009, 1308.


power and transportation networks. The standard wisdom thus anticipates that demand from state actors and individuals embedded in land markets determines patterns of land titling. It suggests that land remains in the customary domain because it is low in value or state actors are disinterested in titling it.

However, two examples illustrate the limitations of top-down and structural approaches to land titling. The first is from Zambia, where customary authorities or “chiefs” are legally recognized as the custodians of customary land. In practice, any new titles require written consent from an official chief. When the government needed land to expand a program of resettlement schemes in 2012, it therefore turned to the chiefs. Bureaucrats traveled throughout the country to the rural homes of customary authorities to beg for tracts of customary land to title, bearing gifts to show respect. They brought them groceries, goats, or chickens; some greeted the chief with cash tucked into the palm of their hands. The bureaucrats’ goal was to convince the chiefs to cede a parcel of land, in order to start the process of permanently converting it to state land title.

Chiefs reacted very differently to the government’s demands for land. Some consented upon first request. One offered the program a very large area of land while telling the bureaucrats to spread the word to investors so that they would seek land in his chiefdom. Some chiefs dictated the location and the size of the land for the government’s resettlement project. A few indefinitely delayed the negotiations. Others explicitly refused to transfer any land out of the customary domain, even after repeated visits from the state’s representatives. From the perspective of bureaucrats seeking land in Zambia, “Chiefs have the upper hand in which area they will give up for government development.” Through their responses to these land negotiations, customary authorities determined which land, if any, was transferred to the state’s formal control.

A second example, from Senegal, highlights the agency of regular citizens in the expansion of state authority over land. Even within the same communities, some citizens dismiss the opportunity to adopt a state land title, while others welcome it. Senegalese farmers with small plots of customary land have the option of titling their land. Without titles, they

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7 Herbst 2000.
9 Interview with bureaucrat (BUR-620), northern Zambia, January 8, 2014.
10 Interview with bureaucrat (BUR-648), Lusaka, Zambia, August 29, 2013.
rely on customary rights. They retain access to land through their connections to the community and to Senegal’s unofficial chiefs – customary authorities who do not have state-recognized land authority. These citizens’ customary property rights may include complex systems of secondary rights, such as seasonal usage arrangements, that serve as a form of risk-sharing within the community.\footnote{For examples, see Toulmin and Quan 2000a; Meinzen-Dick and Mwangi 2009.} Following the government’s efforts to make formalization more accessible, some customary landowners eagerly pursue land titling in order to gain ownership rights in the eyes of the state. They apply to rural councils to have the boundaries of their land documented and their land rights written into the state’s land registries. Other citizens decline the opportunity to convert their customary property rights to titles, reporting that it is unnecessary or that they feel secure on the land of their grandparents.\footnote{Author’s Senegal smallholder survey, 2014.} As these examples illustrate, customary authorities and citizens have vastly different reactions to land titling in their communities, which impacts how and to what extent state control of land grows.

Understanding this contemporary state-building process requires paying greater attention to the responses of these two sets of actors: chiefs and citizens. Why do some chiefs encourage land titling in their domains and others thwart it? Why do some citizens with customary land rights in a community seek a state title while others do not? More generally, how do customary land regimes survive, despite powerful economic interests and state efforts to title land?

Zambia and Senegal provide the foundation for answering these questions. The two countries feature different colonial histories, geographies, and official roles for customary authorities. Nevertheless, they are both part of a broader global pattern in which governments have courted land markets and facilitated land titling, allowing formal state property rights to progressively replace customary land tenure. Examining a similar process in these diverse countries provides greater insight into the determinants of the local decisions that constrain and facilitate the growth of state control over land.

This book will show that customary land is not idly waiting to be titled; rather, it is actively maintained by the actors that gain power from its informality. Moreover, it reveals that the customary institutions in which these chiefs and citizens are embedded shape how they respond to land titling. I argue that both the strength of the institution and the

\footnote{For examples, see Toulmin and Quan 2000a; Meinzen-Dick and Mwangi 2009.}
individual’s status within it impact these local decisions. As a result, communities with stronger customary institutions – those with hierarchical legacies in these two countries – are better able to retain control of land. In addition, by structuring social and political relations within communities, customary institutions also condition whether citizens engage with the state by seeking titles for their own plots of land. Consequently, these institutions impact when and where customary land tenure endures, contributing to the resilience of customary authority and shaping patterns of state building within the territory. Before elaborating upon this institutional argument, the following section situates this debate over land rights within an era of increasing land scarcity and competition for land.

1.1 LAND POLITICS

The struggle for authority over land has high stakes for the state, customary authorities, and citizens. The question of who controls land is deeply political, in part, because land holds multiple forms of value. It is the most important factor of production for agricultural economies: Millions of citizens in African countries depend on secure access to land for their livelihoods. Yet the significance of land extends beyond its material value. Land often holds social importance, as a connection to one’s ancestors and community.¹³ This makes it harder and more contentious to reallocate it among potential land users. Such non-commodity values mean that, unlike bags of maize, land cannot be easily bought and sold for a fixed price. Further, the long history of elites exploiting land as a political resource shapes its contemporary role in politics.¹⁴ Current debates over land rights reflect political grievances about past policies and practices related to land. While the key issues are specific to each country, land is ubiquitous as a political fault line.

As a result, land has played a role in nearly all conflicts in the region. Contested land claims contributed to Côte d’Ivoire’s recent civil war and Kenya’s 2008 electoral violence.¹⁵ In the Democratic Republic of Congo’s protracted conflict, militias have fought to control prime land.¹⁶ The Rwandan genocide was exacerbated by extreme land scarcity and

¹⁴ For examples, see Kanyinga 1998; Chauveau 2000; Klopp 2000; Babo 2013; Médard and Golaz 2013.
¹⁵ Boone 2014; Klaus and Mitchell 2015.
¹⁶ Autesserre 2010.
Rural citizens throughout the continent have been impacted by small-scale land conflicts, which are often associated with divisions based on ethnicity, migration status, and agricultural livelihood (e.g., farmers or pastoralists). In urban areas too, land disputes have become commonplace. There, the combination of high demand for land and unsettled systems of property rights translates into conflict over multiple allocations of the same land parcels and protest over abruptly razed informal settlements. Control of land is a source of power and wealth, making land rights a central issue in contentious politics.

This book examines issues of political authority over land in an era when the stakes of land control and access are rapidly increasing. Pressure on land in Africa is growing, exacerbating existing political cleavages. African cities are the sites of technological innovations and gleaming skyscrapers, yet the majority of the population in sub-Saharan Africa practice agriculture. Given the predicted doubling of the continent’s populations in the next thirty-five years, the number of people dependent on land for their livelihoods will continue to rise. Climate change and land degradation decrease the stock of arable land, pushing households to move or extend their areas of crop production. Well-intentioned conservation efforts sequester major areas of land for carbon trading and animal protection. As the cost of land in cities rises with urbanization, African middle classes are increasingly looking to regional capitals and rural areas to buy land. These compounding sources of stress on land challenge the stability of the current systems of land authority. This intense pressure is magnified by demand for land from global investors.

Investors from a range of both Global North and Global South countries participated in feverish efforts to accumulate African agricultural land in the first decades of the twenty-first century. Global interest in African land was prompted, in part, by concerns about national food security and volatile food prices, and interest in new arenas for investment following the 2008 financial crisis. In 2009 alone, there were an estimated 39.7 million hectares (ha) of investment deals in African land; this

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18 See, for example, du Plessis 2005; Ocheje 2007.
1.1 Land Politics

contrasts with an average of 1.8 million ha per year from 1961 to 2007. They have the potential to fundamentally transform land values in African countries, as land has become increasingly scarce and potential investors abundant.

International and multinational land deals have impacted most countries in Africa, provoking deeply political debates over how land should be used and governed. In Madagascar, President Marc Ravalomanana’s attempt to lease 3.2 million ha of land to the South Korean company Daewoo triggered protests and contributed to the fall of his regime in 2009. Liberia’s Nobel Peace Prize–winning president, Ellen Johnson Sirleaf, was denounced for having allocated a third of the country’s land to international investors between 2006 and 2011, much of it for biofuel production. Sudan, Ethiopia, Madagascar, Mozambique, Tanzania, and Sierra Leone had the greatest number of land deals between 2000 and 2012. The large land deals in Zambia and Senegal described in Chapters 5 and 6 are typical of a phenomenon that is widespread across Africa.

The vast majority of multinational land deals occur on customary land, which is treated as an inexpensive resource by investors and state actors alike. States have promoted and defended land deals as a means of diversifying the national economy and attracting foreign direct investment. Further, these global land markets have roused domestic land markets, as elites and middle classes claimed their own shares in response to the rapid decrease in the supply of customary land. Both private citizens and commercial investors have sought to formalize their rights to new areas of customary land through titling. As a result, markets for customary land have transformed existing systems of land tenure and state–customary relations.

Governments made this possible by establishing legal frameworks to facilitate titling, designed to allow markets to determine the speed and

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22 Deininger and Byerlee 2011, 9.  
23 Alden Wily 2012.  
24 Collier and Venable 2012, 3.  
27 In order of territorial size of land deals by international investors as described in Moyo, Jha, and Yeros 2019, 12–13.  
28 Moyo, Jha, and Yeros 2019, 14. The authors estimate that 80 percent of land deals constituted new alienations of customary land.
location of changes in land rights regimes. These policies empower both public and private actors with influence over where state property rights develop, through “voluntary, purposeful, and sporadic registration,” also known as piecemeal or incremental land titling.\(^9\) Initiatives to advance land titling accelerated in the 1990s, inspired by highly influential narratives of informal property rights as impediments to economic development.\(^{10}\) Further, international financial institutions and donors have championed titling as a necessary tenure reform.\(^{31}\) For example, a 2013 World Bank report estimated that only 10 percent of the land in sub-Saharan Africa had been registered in individual land rights and recommended an increase to 50 percent of land within ten years.\(^{32}\) Governments and international institutions have promoted land titling as a foundation for land markets, tenure security, and economic growth, even as scholars challenged the claim that customary land tenure in Africa is insecure\(^{33}\) and researchers debated whether titling led to improvements in productivity or investment.\(^{34}\) By courting global markets and encouraging land titling, governments have accelerated the expansion of state authority over land.

The local politics of land titling thus merit further scholarly analysis for three key reasons. First, the incremental adoption of land titles is a tremendously important pathway for the growth of state control of land in the contemporary era. Since independence, in 1960 (Senegal) and 1964 (Zambia), the land under the state’s direct authority has grown from 5 to 6 percent to more than 40 percent of the territory, according to the governments’ own records.\(^{35}\) Thousands of negotiations for small and large plots of land have replaced customary tenure with state titles. Beyond Zambia and Senegal, this model of incremental

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\(^9\) Place, Roth, and Hazell 1994, 25. This differs from top-down divisions of land between customary and state rights, such as policies of “compulsory and systematic registration” in which everyone in a given area obtains a land title, adjudication schemes, and the colonial dual land tenure divisions described in Chapter 4 (Place, Roth, and Hazell 1994, 25).

\(^{10}\) Most notably, de Soto 2000. \(^{31}\) Manji 2006. See also, Obeng-Odoom 2020.

\(^{32}\) Byamugisha 2013.

\(^{33}\) Sjaastad and Bromley 1997; Musembi 2007; Goldstein and Urda 2008; Banda 2011.

\(^{34}\) Lund 2001; Higgins et al. 2018.

\(^{35}\) Customary land tenure governed an estimated 95 percent of land at independence in Senegal (see M. C. Diop 2013, 242). In Zambia, 94 percent of the territory was customary land at independence (see Northern Rhodesia, “Ministry of Land Annual Reports” 1935-1946, Shelf 16/Box 93A, Government Series, National Archives of Zambia).
1.2 The Argument

and demand-driven land registration has become “the new orthodoxy” of land titling and has been implemented in nearly every country in sub-Saharan Africa. Second, examining the incremental process of land titling reveals the local politics that sustain customary property rights regimes. It shows why customary land tenure endures, despite policies that have been described “as a systematic effort to dislodge or displace indigenous tenure in order to replace it with registered or state-administered land.” Third, investigating this very localized process of land titling reveals why changes in property rights regimes cannot be divorced from struggles over political authority and the control over a vital resource. Land titling provides a window into how political authority is constructed and negotiated in modern states, particularly those grappling with colonial legacies.

I. 2. THE ARGUMENT

The central premise of this book is that we cannot understand how state power over land grows without examining the institutions that it replaces. We know that transformations in property rights regimes have always been political; they are a product of distributional bargaining that can shift political relations in communities and create winners and losers. Yet, we have few theoretical frameworks to help us understand the role of local institutions. I offer new insights into the political and social determinants of land titling with a theory of collective costs and customary constraints. I argue, first, that customary institutions can impact the expansion of state power over land by shaping the decisions of their members – chiefs and citizens. Even if there are compelling benefits to titling for these actors, customary institutions can create incentives for members to prioritize the collective costs of losing control over land. Second, customary institutions vary in their capacity to shape members’ decisions. However, strong institutions have features that help members slow the erosion of customary land tenure, even on in-demand land. As a result, subnational variation in the strength of customary institutions helps explain broader patterns of state building. It is not merely undesirable or peripheral areas that remain in the customary domain.

This theory highlights the influence of a set of customary institutions that govern social, political, and economic interactions. These institutions

36 Coldham 2000, 71. 37 See footnote 5. 38 Diaw 2005, 49.
generate communities that share norms, beliefs, expectations, and practices. The term “customary” indicates that they gain legitimacy from custom or tradition: Members of the institution understand its processes and rules to be rooted in historical precedents. The main customary institutions examined in this book trace their origins to political communities that formed prior to the creation of the colonial state. However, “customary” does not mean static or unchanging. As Hubert Ouedraogo has explained, “customary” signifies principles that are perceived to be endogenous and local by the community, even as members have creatively adapted these rules over time.

The leaders of these customary institutions are customary authorities, also known as chiefs. Chiefs are an important set of political actors in many African countries. They are officially and unofficially involved in a variety of governance functions, including land management and conflict adjudication. In addition, they serve as intermediaries between citizens and the state. Studies of customary institutions have often treated the chief as synonymous with the institution because of the important role of chiefs in enforcing and interpreting these sets of social and political rules. However, chiefs and customary institutions are not one and the same. Chiefs are individual elites embedded within institutions. These institutions continue to exist in the absence of any one chief. By separating institutions as “the rules of the game in society” from the actors that implement them, we gain new insight into how institutions can shape or constrain the behavior of chiefs. To underscore this point, I refer to both customary authorities and regular citizens as members of the institution.

Ouedraogo 2011.

This terminology was introduced by the colonial state. Some scholars prefer the terms “traditional authority” and “traditional leader” or to prefix these terms with “neo-” to emphasize how “tradition” has been reinterpreted and created. I opted to use the terms “customary authority” and “chief” to represent leaders within customary institutions because they are common parlance in Senegal and Zambia, respectively.

See Chapter 2 for comparative data.

If the institution did not exist in the absence of any one customary authority, the book’s framework would regard it as an extremely weak institution and anticipate an unconstrained chief.

This is consistent with classic political economy approaches to institutions. See North 1990.